

2003 DRAFTING REQUEST

Bill

Received: **08/22/2003**

Received By: **tfast**

Wanted: **Soon**

Identical to LRB:

For: **Mark Gundrum (608) 267-5158**

By/Representing: **Jolene Churchill**

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Transportation - mot veh dealers**

Extra Copies: **ARG - 1**

Submit via email: **YES**

Requester's email: **Rep.Gundrum@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Lemon law changes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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	agary 10/10/2003			_____			
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/1	phurley 02/12/2004	jdye 02/13/2004	pgreensl 02/13/2004	_____	sbasford 02/13/2004	lemery 02/16/2004	

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At intro.

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per Kevin
in Gundrum's office
Assm

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Page 2

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Page 2

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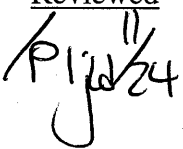
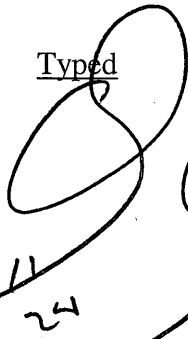
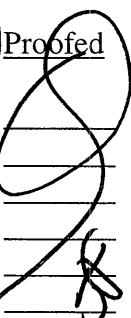
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Gary, Aaron

From: Churchill, Jolene
Sent: Monday, October 06, 2003 12:59 PM
To: Gary, Aaron
Subject: FW: Representative Mark Gundrum - Drafting Request: Lemon Law
Importance: High

-----Original Message-----

From: Churchill, Jolene
Sent: Friday, August 22, 2003 11:44 AM
To: Fast, Timothy; Fassbender, Bob
Subject: Representative Mark Gundrum - Drafting Request: Lemon Law

Dear Tim,

Attached below is some information regarding a bill Rep. Gundrum would like to have drafted relating to Wisconsin's Lemon Law. If you have specific questions, please feel free to contact Robert Fassbender at 258-9506.

Thanks a lot and have a great weekend!

- Jolene
267-5158



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do a preliminary draft
to run it past
by Nov 14th

✓ Add 218.0171(1)(ad) *vehicle*

(ad) "Commercial automobile" means a motor vehicle designed or used to transport passengers or property for commercial purposes and having at least one of the following characteristics: (1) The vehicle is a single vehicle with a gross vehicle weight rating of 16,001 or more pounds or the vehicle's registered weight or actual gross weight is more than 16,000 pounds; or (2) The vehicle is a combination vehicle with a gross combination weight rating, registered weight or actual gross weight of 16,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating, registered weight or actual gross weight of more than 10,000 pounds.

RATIONALE: The clarification concerning "commercial automobiles" is necessary for the change proposed to sub.(2)(c).

Modify 218.0171(1)(d)

(d) "Motor vehicle" means any motor driven vehicle required to be registered under ch. 341 or exempt from registration under s. 341.05 (2), including a demonstrator or executive vehicle not titled or titled by a manufacturer or a motor vehicle dealer, which a consumer purchases or accepts transfer of in this state. For purposes of this section, "Motor vehicle" includes a "commercial automobile." "Motor vehicle" does not mean a moped, those portions of a motor home designed, used or maintained primarily as a mobile dwelling, office or commercial space, or a semitrailer or trailer designed for use in combination with a truck or truck tractor. **RATIONALE:** The clarification concerning "commercial automobiles" is necessary for the change proposed to sub.(2)(c). Defining motor vehicle to include commercial automobile prevents having to use both phrases throughout the statute where it currently says "motor vehicle". E.g. if motor vehicle does not include commercial automobiles, then everywhere in the statute where "motor vehicle" is used, a change to "motor vehicle or commercial automobile" would be necessary.

The motor home phrase is based upon Arizona's lemon law. The change is need to clarify that the portions of a motor home covered by the lemon law are the "motor vehicle" portions NOT the house portions, like the microwave, the stove, etc. Currently, the law is interpreted to provide lemon law remedies, paid for by the final stage manufacturer, when the problems the consumer experienced are with dwelling, office or commercial space portions of the vehicle - portions of the vehicle over which the final stage manufacturer has no warranty, and no control of repairs.

✓ Modify 218.0171(1)(h)

(h) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new motor vehicle or within one year after first delivery of the motor vehicle to a consumer, whichever is sooner:

1. The same nonconformity with the warranty is subject to repair by the manufacturer, motor vehicle lessor, any of the manufacturer's authorized motor vehicle dealers, at least 4 times and the nonconformity continues.

2. The motor vehicle is out of service and in the custody of the manufacturer, an authorized dealer, due to repair attempts (not including a final attempt to cure) for an aggregate of at least 30 days because of warranty nonconformities.

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RATIONALE. This language is based upon South Dakota's lemon law. Most lemon laws define this element as "out of service for repair." Wisconsin's law currently uses the phrase "out of service." It does not modify that phrase with the phrase "for repair". The phrase "out of service" was interpreted by the Court of Appeals in *Vultaggio v. GM* to mean any time period during which the vehicle was incapable of providing service as warranted including those period during which the consumer possessed the vehicle. This conclusion was reached based upon a review of legislative history which showed that the original bill used the language "out of service for repair" but a later amendment deleted the phrase "for repair". The current interpretation creates uncertainty (which often leads to litigation). For example, a consumer has a "hard start" concern on Jan 31, a repair is made, and the car is returned. On Dec 1, the consumer has a second "hard start" concern, a repair is made and the car is returned. Then the consumer seeks lemon law relief and argues that the vehicle was "out of service" for 10 months (well in excess of 30 days). The current interpretation of the phrase "out of service" emboldens the consumer's lawyer to refuse other remedies in favor of a lemon law remedy. Ultimately the only way to answer "was the car 'out of service'" is to submit the fact question to a jury. Hundreds of thousands of litigation dollars are spent on the uncertainty generated by the current interpretation. Public policy does not support a lemon law remedy for the example noted here (two satisfactory repairs, 10 months apart, with unfettered use of the vehicle in the intervening months). Thus public policy requires a change so the current interpretation is corrected.

Note here that the final attempt to cure would count against the four repair attempt element of "reasonable repair attempt" but it would not count against the 30 day out of service element. If there is a single chronic concern, the final repair is less likely to be of significance. If there are several unrelated concerns over the first year of use and several more at the time of notice for a final repair attempt, it would not likely be possible to make the repairs without pushing total days out of service beyond 30 - if those days count against the manufacturer, it has no incentive to make use of the final repair because it would end up having to provide lemon law remedies on a vehicle which it had fixed on the final repair. NOTE: the Court of Appeals has interpreted the law to say that even if the car is fixed on the 31st day out of service or on the 5th repair attempt, it is a lemon and the consumer is entitled to a remedy.

Q **Modify 218.0171(2)(a)**

(a) If a new motor vehicle does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the motor vehicle lessor any of the manufacturer's authorized motor vehicle dealers and makes the motor vehicle available for repair before the expiration of the warranty or one year after first delivery of the motor vehicle to a consumer, whichever is sooner, the nonconformity shall be repaired. In the case of commercial automobiles and motor homes, if the manufacturer, its agent, its authorized dealer, or an appropriate authorized warranty repair facility is unable to repair or correct any nonconformity in a new motor vehicle after a reasonable number of attempts, the consumer shall notify the manufacturer by certified mail, return receipt requested, at the address provided by the manufacturer. The manufacturer may within seven days after receipt of such notification, notify the consumer of a reasonably accessible repair facility and after delivery of the vehicle to the designated repair facility by the consumer, the manufacturer shall, within 14 days, conform the motor vehicle to the warranty. If the manufacturer does not notify the consumer of a reasonably accessible repair facility or perform the repairs within the time periods prescribed in this subsection, the requirement that the manufacturer be given a final attempt to cure the nonconformity does not apply.

RATIONALE: This language is based on Georgia's lemon law. For commercial automobiles and motor homes, there are typically several components over which the assembler or final stage manufacturer has no control regarding repairs, yet it is the assembler or final stage manufacturer which is held liable under the lemon law. Fairness dictates that the manufacturer

need to discuss:
If the motor home stuff is excluded from nonconform, may not need to address this.
Don't see how the unfairness applies to commercial vehicles.

did not include, b/c draft excludes motor home elements.

be given an opportunity to intervene and coordinate and oversee completion of repairs. The consumer is benefited by having the manufacturer involved with component suppliers to "get the repair done right." Moreover, based upon experience in other states with a final repair attempt provision, if the manufacturer cannot complete the repair, it acts immediately to provide a remedy such as a repurchase or trade – without the need for the consumer to exercise notice provisions under e.g. the lemon law. Manufacturers only have this opportunity because their representative got to see, first-hand, the concerns with the vehicle.

Modify 218.0171(2)(b)

(b) 1. If after a reasonable attempt to repair the nonconformity or, in the case of a commercial automobile or motor home, if after a final attempt to cure the nonconformity, it is not repaired, the manufacturer shall carry out the requirement under subd. 2. or 3., whichever is appropriate.

2. The manufacturer shall do one of the following:

a. Accept return of the motor vehicle and replace the motor vehicle with a comparable new motor vehicle and refund any collateral costs.

b. Accept return of the motor vehicle and refund to the consumer and to any holder of a perfected security interest in the consumer's motor vehicle, as their interest may appear, the full purchase price plus any sales tax, finance charge, amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use. Under this subdivision, a reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the motor vehicle by a fraction, the denominator of which is 100,000 or, for a motorcycle, 20,000, or, for a motor home, 60,000 and the numerator of which is the number of miles the motor vehicle was driven before the consumer first reported the nonconformity to the motor vehicle dealer.

The consumer has the option of selecting a refund pursuant to par. b. If a consumer selects a refund, the consumer shall inform the manufacturer in the offer made pursuant to sub. (c), and the manufacturer is required to provide a refund.

RATIONALE. This format – giving the manufacturer the option of providing a replacement or refund but allowing the consumer to veto a replacement – is based on Minnesota's lemon law which affords the manufacturer the choice between providing a refund or replacement but allows the consumer to reject a replacement in favor of a refund. The slightly modified approach used here is mindful of section (2)(c) which says the consumer "offers" to transfer the lemon to the manufacturer and the manufacturer can "accept" this offer and perform within 30 days. To avoid revisions to that section and to avoid timeliness concerns, it is not prudent for a manufacturer to "offer" a replacement vehicle which the consumer then "rejects" in favor of a refund. Such a framework would create the necessity for communication/negotiation during the 30 day period and give an opportunity to delay the manufacturer's performance – a problem that has consistently plagued manufacturers under the current law. See e.g. Court of Appeals' decisions in *Chariton v. Saturn*, and *Church v. Chrysler*.

The motor home use allowance denominator recognizes the differences in use rates for a motor home versus a personal vehicle. Motor homes are driven on average only miles per year compared with 12,000 to 15,000 yearly average for cars. Given the relatively lower use rate of a motor home, the denominator must be changed to afford proportional use allowance to a motor home manufacturer.

Modify 218.0171(2)(c)

(c) To receive a comparable new motor vehicle or a refund due under par. (b) 1. or 2., a consumer described under sub. (1) (b) 1., 2. or 3. shall offer to the manufacturer of the motor

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rework w/ (c) to have let consumer know the mfr option which he chooses

vehicle having the nonconformity to transfer title of that motor vehicle to that manufacturer. No later than 30 days after that offer, the manufacturer shall provide the consumer with the comparable new motor vehicle (but not including a commercial automobile) or refund; in the case of a commercial automobile, no later than 30 days after that offer, the manufacturer shall provide the owner with either: a commitment in writing that the manufacturer will exercise due diligence in providing the owner with a comparable new commercial truck within 120 days from the date of the commitment, or a refund. If the manufacturer makes a commitment in writing to provide the owner with a comparable new commercial truck, it shall provide the owner with a similar vehicle for the owner's use pending delivery of the comparable new commercial truck. When the manufacturer provides the new motor vehicle or refund, the consumer shall return the motor vehicle having the nonconformity to the manufacturer and provide the manufacturer with the certificate of title and all endorsements necessary to transfer title to the manufacturer.

RATIONALE: Logistics make it virtually impossible to provide a replacement commercial automobile within 30 days from a consumer's offer to transfer title. Consequently, under the current version of the law, if a consumer demands a replacement vehicle, it virtually assures the manufacturer will violate the lemon law because it cannot provide the vehicle within 30 days. Public policy does not support creation of technical violations, especially where a violation is tantamount to imposition of a penalty. The proposed change recognizes the limitations manufacturers of commercial automobiles have in providing replacements and affords adequate time, yet it does not put the consumer in any worse position - because a rental would be provided while awaiting the replacement. Moreover, if the consumer did not desire to wait up to 120 days for the replacement, it could exercise its veto under the change proposed in sub. (2)(b) and opt for a repurchase.

Modify 218.0171(3)

(3) If there is available to the consumer an informal dispute settlement procedure which is certified under sub. (4), the consumer may not bring an action under sub. (7) unless he or she first resorts to that procedure. The consumer must complete the procedure before making an offer specified by sub. (2)(c) or (2)(cm).

RATIONALE: This section cures the overlapping timing of the 30 day demand and the 40 day ADR periods. Currently, consumers can send offers under sub. 2(c) or (2)(cm) ("30 day demands") simultaneous with sending a request for ADR. By regulation, an ADR process has 40 days to render a decision. Assuming simultaneous institution of the demand and ADR, by the time the ADR renders a decision, (1) the manufacturer either already responded to the 30 day demand by refunding money or by replacing the vehicle, in which case the ADR was a waste of time and money or (2) the manufacturer "violated the lemon law" by not providing a remedy so the consumer can either (a) accept the ADR decision which is limited to a refund or replacement or (b) reject the decision and pursue a lawsuit where the potential recovery is double the vehicle price plus attorney fees (a recovery made available by the manufacturer's violation of the statute). Given the economic incentives, consumers are enticed to reject the ADR decision and pursue a lawsuit, in which case ADR was a waste of time and money. Under the proposed format, the consumer would have to complete ADR before sending the 30 day demand letter. This format would place strong incentives on early resolution. If a consumer got a favorable ADR decision, it could accept it and thereby bind the manufacturer. There would be no need for a 30 day demand letter. If the consumer rejected it and sent a 30 day demand letter, the manufacturer would most likely accept the demand by providing a remedy (since it already received an adverse ADR decision). Thus in either case the matter is resolved without necessity

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of a lawsuit. If the consumer got an unfavorable decision, it could reject it, and it could choose whether to proceed with a 30 day demand letter (or to seek remedies under other theories like Magnuson-Moss). Importantly, since the manufacturer would have already participated in the ADR, it would be able to rapidly respond to the demand letter – in contrast to the current scheme where some number of days in the 30 day period are spent analyzing the merits of the claim. Public policy favors the proposed format. The format quickly identifies the lemons via a neutral party and those consumers receive rapid remedies. Moreover, those consumers do not need to use the court system to receive a fair remedy. Thus the burden on the courts is reduced. The court system would be a safety net for the vehicles not thought to be “lemons” (by a neutral in the ADR process). NOTE: Manufacturers would continue to have an incentive to resolve matters even before ADR. Where Manufacturers agree that vehicles are “lemons,” they would resolve the claims without spending time or money for ADR.

Modify 218.0171(7)

(7) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of sub. (2)(b). If the manufacturer has an informal dispute settlement procedure which is certified under sub. (4), the court shall award a consumer who prevails in such an action the remedies of sub. (2)(b)2.a. or (2)(b)2.b., together with costs, disbursements and reasonable attorney fees, and any equitable relief the court determines appropriate. If the manufacturer does not have an informal dispute settlement procedure which is certified under sub. (4), the court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief the court determines appropriate. For a commercial automobile, the portion of pecuniary loss subject to doubling is limited to the purchase price of the vehicle's components as installed or warranted by the manufacturer, less a reasonable allowance for use. An action must be commenced within 18 months after first delivery of the motor vehicle except that the period is tolled by participation in an informal dispute settlement procedure as defined in sub. (3).

RATIONALE: Creating a cause of action for violation of sub. (2)(b) clarifies what a consumer may enforce and clarifies the confusion and uncertainty resulting from the Court of Appeals' decision in *Vultaggio v. GM*. That Court held that there were 2 causes of action under the lemon law: (1st cause) a “(2)(b) claim” where a consumer had to prove the vehicle was subject to a reasonable attempt to repair (30 days out of service or 4 repairs with the problem continuing) and there was a nonconformity (a defect or condition that substantially impaired the use, value or safety of the vehicle); and (2nd cause) a “(2)(a) claim” where the consumer only had to prove there was a nonconformity that wasn't repaired. The (2)(a) claim allows as little as one problem which arguably “wasn't repaired” to get a claim to a jury. For example, a consumer has a “hard start” concern on Jan 31, a repair is made, and the car is returned. On Dec 1, the consumer has a second “hard start” concern, a repair is made and the car is returned. Two years later, the consumer has another “hard start” concern. Then the consumer seeks lemon law relief and argues that she had a nonconformity (the Jan 31 complaint) which “wasn't repaired” (as “proven” by the current complaint). Based on these facts, trial courts will let the case go to a jury – meaning the chance for a rapid resolution is significantly impaired. Based on the Court of Appeals' interpretation, the (2)(a) claim eviscerated the need to show multiple repair attempts or multiple days in the shop for service – which are the hallmarks of a true lemon. The problem was further complicated by the lack of direction from the Court on issues like damages. Trial courts have struggled with the question of damages. Many allow a consumer to argue that her

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add in 218.0171(9):
require mfrs to provide similar.
provide a remedy.
if mfr fails to provide remedy to consumer
Failure to provide
could provide
cert.

damages under a (2)(a) claim are the full price of the vehicle (essentially arguing the vehicle is without value so the diminution is 100% of the original price) and if that amount is awarded, the court is compelled to double it. Trial courts also struggle with the definition of "wasn't repaired." Some rule it means "wasn't repaired in the first year"; some say "wasn't repaired in the life of the vehicle." So, a single repair in the 11th month of ownership which "wasn't repaired" can result in a judgment for double the purchase price of the vehicle. Most importantly the absence of clear guideposts creates great uncertainty which prevents rapid resolution and which encourages litigation. The proposed change confirms that the intent of the lemon law is to provide a remedy for owners of vehicles which endured a high number of repairs or a high number of days when the vehicle was unavailable.

Public policy favors a quick resolution to a claim via the least cost to the consumer. ADR offers that result. However, since a consumer is induced to pursue litigation (due to the availability of double damages) consumers often reject favorable ADR decisions so they can take advantage of windfalls. Some manufacturers have abandoned (or chosen not to establish) ADR programs in WI because the mechanism can so easily be undermined. The proposed change simultaneously presents a strong incentive for manufacturers to establish and maintain ADR programs and for consumers to participate in and accept favorable results from the programs. The proposal also provides a safety net for a consumer who does not receive a favorable result at ADR. That consumer can still file a lemon lawsuit through which he could recover damages which would put him back in the position he thought he was in upon buying the vehicle, plus attorney fees and the cost of litigation. The proposal removes the counterproductive incentive to reject a favorable ADR result.

For the statute of limitations: The lemon law addresses problems which a vehicle suffers in its first year of use. Any problems a vehicle has in year 2, 3, or 4 have no effect on whether the vehicle is a lemon under this statute. Moreover, for the vehicle to be a lemon, the problems must "substantially impair use, value or safety" of the vehicle. Lemons are vehicles consumers should not want to drive or continue owning. They are vehicles manufacturers want to get off the road asap. Given the focus on the first year and the focus on problems affecting use, value and safety, public policy favors bringing and resolving these claims quickly. If a vehicle is a lemon, all the relevant evidence is known by the end of the first 12 months. Nothing is gained by waiting. Under the current law, the statute of limitations is 6 years (with no limitation on the mileage). Consequently, a consumer can keep a "lemon" for upwards of 6 years before filing a claim. Claims of that age are too stale to fairly litigate. Moreover, a delay in filing strongly suggests the absence of substantial impairment of use, value or safety, yet only a jury can answer that question. Thus the current limitations period prevents rapid resolution of old claims and encourages litigation. The proposed time period is consistent with a over dozen other states where the limitation periods range from 12 to 24 months:

One year: COLORADO

18 months: ILLINOIS; MISSISSIPPI; MISSOURI; NEVADA; NEW MEXICO; VIRGINIA

Two years: MASSACHUSETTS; KENTUCKY; INDIANA; ARKANSAS; NEBRASKA; NORTH DAKOTA; OREGON; TEXAS

Jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

today
11-24-03
D-note

Gen
1 AN ACT ...; relating to: ~~Repair~~, replacement, and refund under new motor vehicle
2 warranties.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 218.0171 (1) (am) [✓] of the statutes is created to read:

4 218.0171 (1) (am) "Commercial vehicle" means a [✓] motor vehicle designed or
5 used to transport passengers or property for commercial purposes and having at
6 least one of the following characteristics:

7 1. The vehicle is a [✓] single vehicle with a gross vehicle weight rating, registered
8 weight, or actual gross weight of 16,001 [✓] or more pounds.

9 2. The vehicle is a combination vehicle [✓] with a gross combination weight rating,
10 registered weight, or actual gross weight of 16,001 [✓] or more pounds inclusive of a

towed unit with a gross weight weight rating, registered weight, or actual gross weight of more than 10,000 pounds.

SECTION 2. 218.0171 (1) (h) 2. of the statutes is amended to read:

218.0171 (1) (h) 2. The motor vehicle is out of service and in the custody of the manufacturer or an authorized dealer due to repair attempts for an aggregate of at least 30 days because of warranty nonconformities. Time spent in the custody of the manufacturer or an authorized dealer during the final attempt to cure may not be included in the 30-day time period under this paragraph.

History: 1983 a. 48; 1985 a. 205 ss. 1m to 6, 8; 1987 a. 105, 169, 323, 403; 1989 a. 31; 1999 a. 31 s. 287; Stats. 1999 s. 218.0171; 2001 a. 45.

SECTION 3. 218.0171 (1) (f) of the statutes is amended to read:

218.0171 (1) (f) "Nonconformity" means a condition or defect which substantially impairs the use, value or safety of a motor vehicle, and is covered by an express warranty applicable to the motor vehicle or to a component of the motor vehicle, but "Nonconformity" does not include a condition or defect which is the result of abuse, neglect or unauthorized modification or alteration of the motor vehicle by a consumer, or those portions of a motor home designed, used, or maintained primarily as a mobile dwelling or office, including its plumbing, heating, air conditioning and electrical systems, and all appliances and all other equipment carrying a warranty by a manufacturer that is not the motor vehicle manufacturer.

History: 1983 a. 48; 1985 a. 205 ss. 1m to 6, 8; 1987 a. 105, 169, 323, 403; 1989 a. 31; 1999 a. 31 s. 287; Stats. 1999 s. 218.0171; 2001 a. 45.

SECTION 4. 218.0171 (2) (b) 2. (intro) of the statutes is amended to read:

218.0171 (2) (b) 2. At the direction of a consumer described under sub. (1) (b) 1., 2. or 3., The manufacturer shall do one of the following:

SECTION 5. 218.0171 (2) (b) 2. b. of the statutes is amended to read:

218.0171 (2) (b) 2. b. Accept return of the motor vehicle and refund to the consumer and to any holder of a perfected security interest in the consumer's motor

1 vehicle, as their interest may appear, the full purchase price plus any sales tax,
2 finance charge, amount paid by the consumer at the point of sale and collateral costs,
3 less a reasonable allowance for use. Under this subdivision, a reasonable allowance
4 for use may not exceed the amount obtained by multiplying the full purchase price
5 of the motor vehicle by a fraction, the denominator of which is 100,000 or, for a
6 motorcycle, 20,000, or, for a motor home, 60,000✓ and the numerator of which is the
7 number of miles the motor vehicle was driven before the consumer first reported the
8 nonconformity to the motor vehicle dealer. The consumer has the option of selecting
9 a refund under this paragraph✓. If the consumer selects a refund, he or she shall
10 inform the manufacturer in the offer made pursuant to ^{par.} ~~sub.~~ (c)✓ ^{KEEP} and the
11 manufacturer shall provide a refund.

History: 1983 a. 48; 1985 a. 205 ss. 1m to 6, 8; 1987 a. 105, 169, 323, 323; 1989 a. 31; 1999 a. 31 s. 287; Stats. 1999 s. 218.0171; 2001 a. 45.

12 **SECTION 6.** 218.0171 (2) (c) of the statutes is amended to read:

13 218.0171 (2) (c) To receive a comparable new motor vehicle or a refund due
14 under par. (b) 1. or 2., a consumer described under sub. (1) (b) 1., 2. or 3. shall offer
15 to the manufacturer of the motor vehicle having the nonconformity to transfer title
16 of that motor vehicle to that manufacturer. No later than 30 days after that offer, the
17 manufacturer shall provide the consumer with the comparable new motor vehicle or
18 refund, except that ² if the motor vehicle is a✓ commercial vehicle, the manufacturer
19 shall provide the owner, within 30 days after the✓ offer, with a refund or with a
20 commitment in writing that the manufacturer will provide the owner with a
21 comparable new commercial vehicle within 120✓ days from the date of the written
22 commitment. The manufacturer shall exercise due diligence in providing a
23 comparable commercial vehicle. ^{SCORE} If the consumer opts for a replacement vehicle, the
24 manufacturer shall provide, at the direction of the consumer, a comparable vehicle

1 for the temporary use by the consumer until the manufacturer provides the
2 replacement vehicle. ^{plain} When the manufacturer provides the ~~new~~ comparable vehicle
3 for the temporary use by the consumer, or the replacement motor vehicle or refund,
4 the consumer shall return the motor vehicle having the nonconformity to the
5 manufacturer and provide the manufacturer with the certificate of title and all
6 endorsements necessary to transfer title to the manufacturer.

History: 1983 a. 48; 1985 a. 205 ss. 1m to 6, 8; 1987 a. 105, 169, ~~23~~, 403; 1989 a. 31; 1999 a. 31 s. 287; Stats. 1999 s. 218.0171; 2001 a. 45.

7 **SECTION 7.** 218.0171 (3) of the statutes is amended to read:

8 218.0171 (3) If there is available to the consumer an informal dispute
9 settlement procedure ~~which~~ ^{that} is certified under sub. (4), the consumer may not bring
10 an action under sub. (7) or make an offer specified in sub. (2) (c) or (cm) [✓] unless he or
11 she first ~~resorts to~~ completes that procedure.

History: 1983 a. 48; 1985 a. 205 ss. 1m to 6, 8; 1987 a. 105, 169, ~~23~~, 403; 1989 a. 31; 1999 a. 31 s. 287; Stats. 1999 s. 218.0171; 2001 a. 45.

12 **SECTION 8.** 218.0171 (7) of the statutes is amended to read:

13 218.0171 (7) In addition to pursuing any other remedy, a consumer may bring
14 an action to recover for any damages caused by a violation of ~~this section.~~ ~~The sub.~~
15 (2) (b). [✓] If the manufacturer has an [✓] informal dispute settlement procedure ~~which~~ ^{that} is
16 certified under sub. (4). [✓] the court shall award a consumer who prevails in the
17 informal dispute settlement procedure the remedies of sub. (2) (b) 2. a. or b., together
18 with costs, disbursements, and reasonable attorneys' fees, and any equitable relief
19 the court determines appropriate. If the manufacturer does not have ^g an informal
20 dispute settlement procedure ~~which~~ ^{that} is certified under sub. (4), the court shall award
21 a consumer who prevails in such an action twice the amount of any pecuniary loss,
22 together with costs, disbursements and reasonable attorney fees, and any equitable
23 relief the court determines appropriate. If the vehicle is a commercial vehicle, the
24 portion of [✓] pecuniary loss subject to doubling is limited to the purchase price of the

- 1 vehicle's components installed or warranted by the manufacturer, less a reasonable
2 allowance for use. An action must be commenced within ✓ 18 months after first
3 delivery of the motor vehicle except that the period is tolled by participation in an
4 informal dispute settlement procedure as ^{specified} ~~defined~~ in sub. (3).

5 **History:** 1983 a. 48; 1985 a. 205 ss. 1m to 6, 8; 1987 a. 105, 169, 323, 403; 1989 a. 31; 1999 a. 31 s. 287; Stats. 1999 s. 218.0171; 2001 a. 45.

(END)

d-note



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3152/2dn

PJH:.....

Pl
JLd

Representative Gundrum:

Please note that this draft, in some ways, goes further than the suggested language you forwarded to me regarding motor homes. Under this draft, those components of a motor home that are primarily used for dwelling or office space are exempted completely from the "lemon law."

Please also note that the suggested language I received regarding the treatment of s. 218.0171 (2) (c) is ambiguous. As written, the suggested language could be read as allowing the manufacturer to simply engage in due diligence within 120 days, but leaving the time of actual delivery of the new commercial vehicle open-ended. It is also unclear whether the manufacturer of a commercial motor vehicle must give a refund within the 30 days or whether it has the full 120 days to provide a refund.

I drafted the bill to require the manufacturer to provide a replacement vehicle within 120 days, and to practice due diligence in providing the vehicle (so hopefully some consumers will receive the replacement before the deadline), and to require the manufacturers who opt for the refund to provide the refund within 30 days. If this is not what you intended, please let me know. *

I also departed from the suggested language to require manufacturers to provide a "loaner" to consumers until a replacement vehicle is delivered.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3152/P1dn
PJH:jld:rs

November 24, 2003

Representative Gundrum:

Please note that this draft, in some ways, goes further than the suggested language you forwarded to me regarding motor homes. Under this draft, those components of a motor home that are primarily used for dwelling or office space are exempted completely from the "lemon law."

Please also note that the suggested language I received regarding the treatment of s. 218.0171 (2) (c) is ambiguous. As written, the suggested language could be read as allowing the manufacturer to simply engage in due diligence within 120 days, but leaving the time of actual delivery of the new commercial vehicle open-ended. It is also unclear whether the manufacturer of a commercial motor vehicle must give a refund within the 30 days or whether it has the full 120 days to provide a refund.

I drafted the bill to require the manufacturer to provide a replacement vehicle within 120 days, and to practice due diligence in providing the vehicle (so hopefully some consumers will receive the replacement before the deadline), and to require the manufacturers who opt for the refund to provide the refund within 30 days. If this is not what you intended, please let me know.

I also departed from the suggested language to require manufacturers to provide a "loaner" to consumers until a replacement vehicle is delivered.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.state.wi.us

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

LRB-3152/P1

PJH:jld:rs

1 the motor vehicle having the nonconformity to transfer title of that motor vehicle to that
2 manufacturer. No later than 30 days after that offer, the manufacturer shall provide the consumer
3 with the comparable new motor vehicle or refund, except that, if the motor vehicle is a
4 commercial vehicle, the manufacturer shall provide the owner, within 30 days after the offer,
5 with a refund or with a commitment in writing that the manufacturer will provide the owner with
6 a comparable new commercial vehicle within 120 days from the date of the written commitment.
7 The manufacturer shall exercise due diligence in providing a comparable commercial vehicle. If
8 the consumer manufacturer opts for to provide a replacement comparable vehicle, but is unable
9 to do so within 30 days, the manufacturer shall provide, at the direction of the consumer, a
10 comparable vehicle for the temporary use by the consumer until the manufacturer provides the
11 replacement comparable vehicle. When the manufacturer provides the new comparable
12 vehicle for the temporary use by the consumer, or the replacement comparable motor
13 vehicle or refund, the consumer shall return the motor vehicle having the nonconformity
14 to the manufacturer and provide the manufacturer with the certificate of title and all
15 endorsements necessary to transfer title to the manufacturer.

16 SECTION 7.218.0171 (3) of the statutes is amended to read:

17 218.0171 (3) If there is available to the consumer an informal dispute settlement
18 procedure ~~which~~ that is certified under sub. (4), the consumer may not bring an action under
19 sub. (7) or make an offer specified in sub. (2) (c) or (cm) unless he or she first resorts
20 ~~to~~ completes that procedure.

21 SECTION 8.218.0171 (7) of the statutes is amended to read:

22 218.0171 (7) In addition to pursuing any other remedy, a consumer may bring an action
23 to recover for any damages caused by a violation of ~~this section.~~ The sub. (2) (b). If the

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

LRB-3152/P1

PJH:jld:rs

1 manufacturer has an informal dispute settlement procedure that is certified under sub.
2 (4), the court shall award a consumer who prevails in ~~the informal dispute settlement~~
3 ~~procedure~~ an action brought under this section the remedies of sub. (2) (b) 2. a. or b.,
4 together with costs, disbursements, and reasonable attorney fees, and any equitable
5 relief the court determines appropriate. If the manufacturer does not have an informal
6 dispute settlement procedure that is certified under sub. (4), the court shall award a
7 consumer who prevails in such an action twice the amount of any pecuniary loss,
8 together with costs, disbursements and reasonable attorney fees, and any equitable
9 relief the court determines appropriate. If the vehicle is a commercial vehicle, the
10 portion of pecuniary loss subject to doubling is limited to the purchase price of the
11 vehicle's components installed or warranted by the manufacturer, less a reasonable
12 allowance for use. An action must be commenced within 18 months after first delivery
13 of the motor vehicle except that the period is tolled by participation in an informal
14 dispute settlement procedure as specified in sub. (3).

(END)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Soon
12-29-03

D-note

Regen

1 AN ACT *to amend* 218.0171 (1) (f), 218.0171 (1) (h) 2., 218.0171 (2) (b) 2. (intro.),
2 218.0171 (2) (b) 2. b., 218.0171 (2) (c), 218.0171 (3) and 218.0171 (7); and *to*
3 *create* 218.0171 (1) (am) of the statutes; **relating to:** repair, replacement, and
4 refund under new motor vehicle warranties.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** 218.0171 (1) (am) of the statutes is created to read:

6 218.0171 (1) (am) "Commercial vehicle" means a motor vehicle designed or
7 used to transport passengers or property for commercial purposes and having at
8 least one of the following characteristics:

9 1. The vehicle is a single vehicle with a gross vehicle weight rating, registered
10 weight, or actual gross weight of 16,001 or more pounds.

1 2. The vehicle is a combination vehicle with a gross combination weight rating,
2 registered weight, or actual gross weight of 16,001 or more pounds inclusive of a
3 towed unit with a gross weight weight rating, registered weight, or actual gross
4 weight of more than 10,000 pounds.

5 **SECTION 2.** 218.0171 (1) (f) of the statutes is amended to read:

6 218.0171 (1) (f) "Nonconformity" means a condition or defect which ✓
7 substantially impairs the use, value or safety of a motor vehicle, and is covered by
8 an express warranty applicable to the motor vehicle or to a component of the motor
9 vehicle, ~~but~~. "Nonconformity" does not include a condition or defect which is the
10 result of abuse, neglect or unauthorized modification or alteration of the motor
11 vehicle by a consumer, or those portions of a motor home designed, used, or
12 maintained primarily as a mobile dwelling or office, including its plumbing, heating,
13 air conditioning and electrical systems, and all appliances and all other equipment
14 carrying a warranty by a manufacturer that is not the motor vehicle manufacturer. ✓

15 **SECTION 3.** 218.0171 (1) (h) 2. of the statutes is amended to read:

16 218.0171 (1) (h) 2. The motor vehicle is out of service and in the custody of the
17 manufacturer ~~or~~ an authorized dealer ^{→ score} due to repair attempts for an aggregate of at
18 least 30 days because of warranty nonconformities. Time spent in the custody of the
19 manufacturer ~~or~~ an authorized dealer during the final attempt to cure ^{← scored comma} may not be
20 included in the 30-day time period under this paragraph. ✓

21 **SECTION 4.** 218.0171 (2) (b) 2. (intro.) of the statutes is amended to read:

22 218.0171 (2) (b) 2. (intro.) ~~At the direction of a consumer described under sub.~~
23 ~~(1) (b) 1., 2. or 3.,~~ The manufacturer shall do one of the following:

24 **SECTION 5.** 218.0171 (2) (b) 2. b. of the statutes is amended to read:

a condition
or
defect
affecting

Insert
A

or an authorized
repair facility

or an
appropriate
authorized
warranty
repair
facility

provided
under
sub. (2)(a)

Insert B

218.0171 (2) (b) 2. b. Accept return of the motor vehicle and refund to the consumer and to any holder of a perfected security interest in the consumer's motor vehicle, as their interest may appear, the full purchase price plus any sales tax, finance charge, amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use. Under this subdivision, a reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the motor vehicle by a fraction, the denominator of which is 100,000 or, for a motorcycle, 20,000, or, for a motor home, 60,000, and the numerator of which is the number of miles the motor vehicle was driven before the consumer first reported the nonconformity to the motor vehicle dealer. The consumer has the option of selecting a refund under this paragraph. If the consumer selects a refund, he or she shall inform the manufacturer in the offer made pursuant to par. (c), and the manufacturer shall provide a refund.

SECTION 6. 218.0171 (2) (c) of the statutes is amended to read:

218.0171 (2) (c) To receive a comparable new motor vehicle or a refund due under par. (b) 1. or 2., a consumer described under sub. (1) (b) 1., 2. or 3. shall offer to the manufacturer of the motor vehicle having the nonconformity to transfer title of that motor vehicle to that manufacturer. No later than 30 days after that offer, the manufacturer shall provide the consumer with the comparable new motor vehicle or refund, except that, if the motor vehicle is a commercial vehicle, the manufacturer shall provide the owner, within 30 days after the offer, with a refund or with a commitment in writing that the manufacturer will provide the owner with a comparable new commercial vehicle within 120 days from the date of the written commitment. The manufacturer shall exercise due diligence in providing a comparable commercial vehicle. If the consumer opts for a replacement vehicle, the

Manufacturer

to provide a comparable

but is unable to do so within 30 days

1 manufacturer shall provide, at the direction of the consumer, a ~~comparable~~ vehicle
2 for the temporary use by the consumer until the manufacturer provides the
3 replacement vehicle. When the manufacturer provides the new comparable vehicle
4 for the temporary use by the consumer, or the replacement motor vehicle or refund,
5 the consumer shall return the motor vehicle having the nonconformity to the
6 manufacturer and provide the manufacturer with the certificate of title and all
7 endorsements necessary to transfer title to the manufacturer.

8 **SECTION 7.** 218.0171 (3) [✓] of the statutes is amended to read:

9 218.0171 (3) If there is available to the consumer an informal dispute
10 settlement procedure ~~which~~ that is certified under sub. (4), the consumer may not
11 bring an action under sub. (7) or make an offer specified in sub. (2) (c) or (cm) unless
12 he or she first ~~resorts to~~ completes that procedure.

13 **SECTION 8.** 218.0171 (7) [✓] of the statutes is amended to read:

14 218.0171 (7) In addition to pursuing any other remedy, a consumer may bring
15 an action to recover for any damages caused by a violation of this section. The sub.
16 (2) (b). If the manufacturer has an informal dispute settlement procedure that is
17 certified under sub. (4), the court shall award a consumer who prevails in ~~the~~
18 informal dispute settlement procedure the remedies of sub. (2) (b) 2. a. or b., together
19 with costs, disbursements, and reasonable attorney fees, and any equitable relief the
20 court determines appropriate. If the manufacturer does not have an informal
21 dispute settlement procedure that is certified under sub. (4), the court shall award
22 a consumer who prevails in such an action twice the amount of any pecuniary loss,
23 together with costs, disbursements and reasonable attorney fees, and any equitable
24 relief the court determines appropriate. If the vehicle is a commercial vehicle, the
25 portion of pecuniary loss subject to doubling is limited to the purchase price of the

an action
brought under this section ✓

1 vehicle's components installed or warranted by the manufacturer, less a reasonable
2 allowance for use. An action must be commenced within 18 months after first
3 delivery of the motor vehicle except that the period is tolled by participation in an
4 informal dispute settlement procedure as specified in sub. (3).

5

(END)

d-note
↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3152/P2dn

PJH:jld:rs

↑
stays

Representative Gundrum:

I have redrafted the bill according to the instructions forwarded to me. I am unsure as to the intent behind some of the suggested language, particularly in the newly amended s. 218.0171 (2) (a). ✓ Under current law, a consumer must present the nonconforming vehicle to the manufacturer, lessor, or dealer ✓ and make the vehicle available for repair within one year. The newly suggested language requires the consumer, after a repair is attempted, (I used the suggested "after a reasonable number of attempts," although I am not at all sure that that language gives sufficient information to consumers), to notify the manufacturer that the vehicle is still nonconforming, and requires the manufacturer to provide the consumer with an accessible repair facility.

This seems redundant, as the manufacturer (or the dealer or lessor) has already been notified that the vehicle is nonconforming, and the consumer has already taken the vehicle to the manufacturer, dealer, or lessor for repairs. What is the intent behind having the manufacturer provide the location of a repair facility if the consumer has already tried to have the vehicle repaired? I can understand the need to amend the section to include ^{an} "authorized warranty repair facility," but I do not understand the additional amendments. Please advise. I hope you and your family enjoyed your Christmas, and I look forward to talking with you.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.state.wi.us

1 SECTION 1. 218.0171 (1) (am) of the statutes is created to read:

2 218.0171 (1) (am) "Commercial vehicle" means a motor vehicle designed or used to
3 transport passengers or property for commercial purposes and having at least one of the
4 following characteristics:

5 1. The vehicle is a single vehicle with a gross vehicle weight rating, registered weight, or
6 actual gross weight of 16,001 or more pounds.

7 2. The vehicle is a combination vehicle with a gross combination weight rating,
8 registered weight, or actual gross weight of 16,001 or more pounds inclusive of a towed unit
9 with a gross weight weight rating, registered weight, or actual gross weight of more
10 than 10,000 pounds.

11 SECTION 2. 218.0171 (1) (f) of the statutes is amended to read:

12 218.0171 (1) (f) "Nonconformity" means a condition or defect which substantially
13 impairs the use, value or safety of a motor vehicle, and is covered by an express
14 warranty applicable to the motor vehicle or to a component of the motor vehicle, but,

15 "Nonconformity" does not include a condition or defect which is the result of abuse,
16 neglect or unauthorized modification or alteration of the motor vehicle by a consumer,
17 or a condition or defect affecting those portions of a motor home designed, used, or

18 maintained primarily as living facilities. Living facilities of a motor home include the
19 flooring, appliances, plumbing system and fixtures, roof air conditioner, television and
20 entertainment systems, furnace, generator, electrical systems other than automotive
21 circuits, the side entrance door, exterior compartments, and any windows other than
22 the windshield and driver and front passenger windows. plain period

23 SECTION 3. 218.0171 (1) (h) 2. of the statutes is amended to read:

Insert
A

scored
text

1 ~~218.0171 (1) (h) 2. The motor vehicle is out of service and in the custody of the~~
 2 ~~manufacturer, or an authorized dealer, or an appropriate authorized warranty repair facility due~~
 3 ~~to repair attempts for an aggregate of at least 30 days because of warranty nonconformities.~~
 4 ~~Time spent in the custody of the manufacturer or an authorized dealer during the final~~
 5 ~~attempt to cure provided under subsection (2)(a) may not be included in the 30-day time~~
 6 ~~period under this paragraph.~~

7 ~~Now Section 218.071(2)(a) of the statutes is amended to read:~~
 8 ~~SECTION #.~~

9 218.071(2)(a) If a new motor vehicle does not conform to an applicable express
 10 warranty and the consumer reports the nonconformity to the manufacturer, the motor vehicle
 11 lessor ^{or} any of the manufacturer's authorized motor vehicle dealers, ^{an} ~~or appropriate authorized~~
 12 ~~warranty repair facilities~~ ^{facility} and makes the motor vehicle available for repair before the expiration
 13 of the warranty or one year after first delivery of the motor vehicle to a consumer, whichever is
 14 sooner, the nonconformity shall be repaired. If the manufacturer, its agent, its authorized dealer,
 15 or an appropriate authorized warranty repair facility is unable to repair or correct any
 16 nonconformity in a new motor vehicle after a reasonable number of attempts, the consumer shall
 17 notify the manufacturer by certified mail, return receipt requested, at the address provided by the
 18 manufacturer. The manufacturer shall, within ⁷ ~~seven~~ days after receipt of such notification, notify
 19 the consumer of a reasonably accessible repair facility and ² ~~after~~ delivery of the vehicle to the
 20 designated repair facility by the consumer, the manufacturer shall, within 14 days, conform the
 21 motor vehicle to the warranty. If the manufacturer fails to notify the consumer of a reasonably
 22 accessible repair facility or perform the repairs within the time periods prescribed in this
 23 subsection, the requirement that the manufacturer be given a final attempt to cure the
nonconformity does not apply.

SECTION #.

NEW SECTION (3a). 218.071(2)(b) 1. of the statutes is amended to read: ~~par. 1~~

218.071(2)(b)1. If after a ~~reasonable attempt to repair~~ final attempt to cure provided under

~~sub. (2)(a)~~ (a) the nonconformity is not repaired, the manufacturer shall carry out the

requirement under subd. 2. or 3., whichever is appropriate. (end ins)

SECTION 4. 218.0171 (2) (b) 2. (intro.) of the statutes is amended to read:

218.0171 (2) (b) 2. (intro.) ~~At the direction of a consumer described under sub. (1) (b) 1., 2. or 3.,~~ The manufacturer shall do one of the following:

SECTION 5. 218.0171 (2) (b) 2. b. of the statutes is amended to read:

218.0171 (2) (b) 2. b. Accept return of the motor vehicle and refund to the consumer and to any holder of a perfected security interest in the consumer's motor vehicle, as their interest may appear, the full purchase price plus any sales tax, finance charge, amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use. Under this subdivision, a reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the motor vehicle by a fraction, the denominator of which is 100,000 or, for a motorcycle, 20,000, or, for a motor home, 60,000, and the numerator of which is the number of miles the motor vehicle was driven before the consumer first reported the nonconformity to the motor vehicle dealer. The consumer has the option of selecting a refund under this paragraph. If the consumer selects a refund, he or she shall inform the manufacturer in the offer made pursuant to par. (c), and the manufacturer shall provide a refund.

SECTION 6. 218.0171 (2) (c) of the statutes is amended to read:

218.0171 (2) (c) To receive a comparable new motor vehicle or a refund due under par. (b) 1. or 2., a consumer described under sub. (1) (b) 1., 2. or 3. shall offer to the manufacturer of

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3152/P2dn
PJH:jld:rs

January 6, 2004

Representative Gundrum:

I have redrafted the bill according to the instructions forwarded to me. I am unsure as to the intent behind some of the suggested language, particularly in the newly amended s. 218.0171 (2) (a). Under current law, a consumer must present the nonconforming vehicle to the manufacturer, lessor, or dealer and make the vehicle available for repair within one year. The newly suggested language requires the consumer, after a repair is attempted (I used the suggested "after a reasonable number of attempts," although I am not at all sure that that language gives sufficient information to consumers), to notify the manufacturer that the vehicle is still nonconforming, and requires the manufacturer to provide the consumer with an accessible repair facility.

This seems redundant, as the manufacturer (or the dealer or lessor) has already been notified that the vehicle is nonconforming, and the consumer has already taken the vehicle to the manufacturer, dealer, or lessor for repairs. What is the intent behind having the manufacturer provide the location of a repair facility if the consumer has already tried to have the vehicle repaired? I can understand the need to amend the section to include an "authorized warranty repair facility," but I do not understand the additional amendments. Please advise. I hope you and your family enjoyed your Christmas, and I look forward to talking with you.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.state.wi.us

Changes to LRB 3152/P2 (Lemon Law)

Section 4 (Final Attempt to Repair). Modify this provision so that the final attempt to repair applies to motor home and commercial vehicles only (i.e., not automobiles). Revisions would read:

SECTION 4. 218.0171 (2) (a) of the statutes is amended to read:

218.0171 (2) (a) If a new motor vehicle does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the motor vehicle lessor or, any of the manufacturer's authorized motor vehicle dealers, or an appropriate authorized warranty repair facility and makes the motor vehicle available for repair before the expiration of the warranty or one year after first delivery of the motor vehicle to a consumer, whichever is sooner, the nonconformity shall be repaired. For commercial vehicles and motor homes, if the manufacturer, its agent, its authorized dealer, or an appropriate authorized warranty repair facility is unable to repair or correct any nonconformity in a new motor vehicle after a reasonable number of attempts attempt to repair, the consumer shall notify the manufacturer by certified mail, return receipt requested, at the address provided by the manufacturer. The manufacturer shall, within 7 days after receipt of such notification, notify the consumer of a reasonably accessible repair facility and, after delivery of the vehicle to the designated repair facility by the consumer, the manufacturer shall, within 14 days, conform the motor vehicle to the warranty. If the manufacturer fails to notify the consumer of a reasonably accessible repair facility or perform the repairs within the time periods prescribed in this subsection, the requirement that the commercial vehicle or motor home manufacturer be given a final attempt to cure the nonconformity does not apply.

NEW SECTION. 218.071(2)(b) 1. of the statutes in amended to read: (b)

218.071(2)(b)1. If after a reasonable attempt to repair or a final attempt to cure provided under subsection (2)(a) the nonconformity is not repaired, the manufacturer shall carry out the requirement under subd. 2. or 3., whichever is appropriate.

Note: The drafter commented that the rationale behind this provision was unclear; that is, the notice might be redundant because the manufacturer already receives notice under existing law. This language is based on Georgia's lemon law. For commercial truck/tractors and motor homes, there are typically several components over which the assembler or final stage manufacturer has no control regarding repairs, yet it is the assembler or final stage manufacturer which is held liable under the lemon law. Fairness dictates that the manufacturer be given an opportunity to intervene and coordinate and oversee completion of repairs. The consumer is benefited by having the manufacturer involved with component suppliers to "get the repair done right." Moreover, based upon experience in other states with a final repair attempt provision, if the manufacturer cannot complete the repair, it acts immediately to provide a remedy such as a repurchase or trade – without the need for the consumer to exercise notice provisions under e.g. the lemon law. Manufacturers only have this opportunity because their representative got to see, first-hand, the concerns with the vehicle.

For commercial truck/tractors and RVs, often there is service made at more than one dealer and possibly within a short period of time so the manufacturer has no opportunity to identify the potential for a chronic problem before the presumption is

met. For example, a commercial truck/tractor may have four service visits in one cross-country trip none of which the manufacturer is aware of before a claim is filed – because the reporting of warranty work to the manufacturer may not occur until after the claim is filed.

New Section (Waiver of Allowance for Use). 218.0171 (2) (b) 2. a. of the statutes is amended to read:

218.0171(2)(b)2.a. Accept return of the motor vehicle and replace the motor vehicle with a comparable new motor vehicle and refund any collateral costs. The consumer has the option of selecting a comparable new vehicle under this paragraph, except that in lieu of a comparable new vehicle the manufacturer may elect to provide a refund under par. b upon waiver by the manufacturer of the allowance for use deduction provided under par. b. If the consumer selects a comparable new vehicle, he or she shall inform the manufacturer in the offer made pursuant to par. (c). ✓

Section 7 (Commercial Vehicles). Clarify that the alternative provided here (additional time upon commitment to provide vehicle) relates only to commercial vehicles and that the comparable vehicle is a “new” vehicle. Revisions would read:

SECTION 7. 218.0171 (2) (c) of the statutes is amended to read:

218.0171 (2) (c) To receive a comparable new motor vehicle or a refund due under par. (b) 1. or 2., a consumer described under sub. (1) (b) 1., 2. or 3. shall offer to the manufacturer of the motor vehicle having the nonconformity to transfer title of that motor vehicle to that manufacturer. No later than 30 days after that offer, the manufacturer shall provide the consumer with the comparable new motor vehicle or refund, except that, if the motor vehicle is a commercial vehicle, the manufacturer shall provide the owner, within 30 days after the offer, with a refund or with a commitment in writing that the manufacturer will provide the owner with a comparable new commercial vehicle within 120 days from the date of the written commitment. The commercial vehicle manufacturer shall exercise due diligence in providing a comparable new commercial vehicle. If the commercial vehicle manufacturer opts to provide a comparable new vehicle but is unable to do so within 30 days, the manufacturer shall provide, at the direction of the consumer, a vehicle for the temporary use by the consumer until the manufacturer provides the comparable new vehicle. When the manufacturer provides the new motor vehicle or refund, the consumer shall return the motor vehicle having the nonconformity to the manufacturer and provide the manufacturer with the certificate of title and all endorsements necessary to transfer title to the manufacturer. ✓

Section 8 (Notice of Rejection of Decision). Amend Section 8 to read:

SECTION 8. 218.0171 (3) of the statutes is amended to read:

218.0171 (3) If there is available to the consumer an informal dispute settlement procedure which that is certified under sub. (4), the consumer may not bring an action under sub. (7) or make an offer specified in sub. (2) (c) or (cm) unless he or she first resorts to completes that procedure and provides written notice to the manufacturer that he or she rejects the decision rendered in the procedure. ✓

Section 9 (Remedies). Modify this section to read:

SECTION 9. 218.0171 (7) of the statutes is amended to read:

218.0171 (7) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this section. The sub. (2)

(b). If the manufacturer has consumer has been awarded relief under an informal dispute settlement procedure that is certified under sub. (4), the court shall award a consumer who prevails in an action brought under this section the remedies of sub. (2) (b) 2. a. or b., together with costs, disbursements, and reasonable attorney fees, and any equitable relief the court determines appropriate. If the manufacturer does not have an informal dispute settlement procedure that is certified under sub. (4) or if the consumer is not granted an award under the certified procedure, the court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief the court determines appropriate. If the vehicle is a commercial vehicle, the portion of pecuniary loss subject to doubling is limited to the purchase price of the vehicle's components installed or warranted by the manufacturer, less a reasonable allowance for use. An action must be commenced within 18 months two years after first delivery of the motor vehicle except that the period is tolled by participation in an informal dispute settlement procedure as specified in sub. (3).

Section 9 (Statute of Limitations). Modify this section as noted above to extend the statute of limitations from 18 months to 2 years from delivery of vehicle. Two years is consistent with Massachusetts, Kentucky, Indiana, Arkansas, Nebraska, North Dakota, Oregon and Texas.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In 2-5-01
Soon

Regen

1 AN ACT *to amend* 218.0171 (1) (f), 218.0171 (1) (h) 2., 218.0171 (2) (a), 218.0171
2 (2) (b) 2. (intro.), 218.0171 (2) (b) 2. b., 218.0171 (2) (c), 218.0171 (3) and
3 218.0171 (7); and *to create* 218.0171 (1) (am) of the statutes; **relating to:**
4 repair, replacement, and refund under new motor vehicle warranties.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** 218.0171 (1) (am) [✓] of the statutes is created to read:

6 218.0171 (1) (am) "Commercial vehicle" means a motor vehicle designed or
7 used to transport passengers or property for commercial purposes and having at
8 least one of the following characteristics:

9 1. The vehicle is a single vehicle with a gross vehicle weight rating, registered
10 weight, or actual gross weight of 16,001 or more pounds.

1 2. The vehicle is a combination vehicle with a gross combination weight rating,
2 registered weight, or actual gross weight of 16,001 or more pounds inclusive of a
3 towed unit with a gross weight weight rating, registered weight, or actual gross
4 weight of more than 10,000 pounds.

5 SECTION 2. 218.0171 (1) (f) of the statutes is amended to read:

6 218.0171 (1) (f) “Nonconformity” means a condition or defect which
7 substantially impairs the use, value or safety of a motor vehicle, and is covered by
8 an express warranty applicable to the motor vehicle or to a component of the motor
9 vehicle, ~~but~~. “Nonconformity” does not include a condition or defect which is the
10 result of abuse, neglect or unauthorized modification or alteration of the motor
11 vehicle by a consumer, or a condition or defect affecting those portions of a motor
12 home designed, used, or maintained primarily as living facilities. Living facilities
13 of a motor home include the flooring, appliances, plumbing system and fixtures, roof
14 air conditioner, television and entertainment systems, furnace, generator, electrical
15 systems other than automotive circuits, the side entrance door, exterior
16 compartments, and any windows other than the windshield and driver and front
17 passenger windows.

18 SECTION 3. 218.0171 (1) (h) 2. of the statutes is amended to read:

19 218.0171 (1) (h) 2. The motor vehicle is out of service and in the custody of the
20 manufacturer, an authorized dealer, or an appropriate authorized warranty repair
21 facility due to repair attempts for an aggregate of at least 30 days because of
22 warranty nonconformities. Time spent in the custody of the manufacturer,
23 authorized dealer, or authorized warranty repair facility during the final attempt to
24 cure provided under sub. (2) (a) may not be included in the 30-day time period under
25 this paragraph.

✓
1 SECTION 4. 218.0171 (2) (a) of the statutes is amended to read:

2 218.0171 (2) (a) If a new motor vehicle does not conform to an applicable
3 express warranty and the consumer reports the nonconformity to the manufacturer,
4 the motor vehicle lessor ~~or~~, any of the manufacturer's authorized motor vehicle
5 dealers, or an appropriate authorized warranty repair facility and makes the motor
6 vehicle available for repair before the expiration of the warranty or one year after
✓ 7 first delivery of the motor vehicle to a consumer, whichever is sooner, the

In the case of a commercial vehicle or a motor home, if
8 nonconformity shall be repaired. the manufacturer, its agent, its authorized
9 dealer, or an appropriate authorized warranty repair facility is unable to repair or
10 correct any nonconformity in a new motor vehicle after a reasonable number of ✓
11 attempts, the consumer shall notify the manufacturer by certified mail, return attempt
12 receipt requested, at the address provided by the manufacturer. The manufacturer to
13 shall, within 7 days after receipt of such notification, notify the consumer of a repair
14 reasonably accessible repair facility and, after delivery of the vehicle to the
15 designated repair facility by the consumer, the manufacturer shall, within 14 days,
16 conform the motor vehicle to the warranty. If the manufacturer fails to notify the
17 consumer of a reasonably accessible repair facility or perform the repairs within the
18 time periods prescribed in this subsection, the requirement that the manufacturer
19 be given a final attempt to cure the nonconformity does not apply. of the commercial vehicle or motor home

✓
20 SECTION 5. 218.0171 (2) (b) 2. (intro.) of the statutes is amended to read:

21 218.0171 (2) (b) 2. (intro.) ~~At the direction of a consumer described under sub.~~

Insert A
22 (1) (b) 1., 2. or 3., The manufacturer shall do one of the following:

23 SECTION 6. 218.0171 (2) (b) 2. b. of the statutes is amended to read:

✓ 24 218.0171 (2) (b) 2. b. Accept return of the motor vehicle and refund to the
25 consumer and to any holder of a perfected security interest in the consumer's motor

Insert B

1 vehicle, as their interest may appear, the full purchase price plus any sales tax,
2 finance charge, amount paid by the consumer at the point of sale and collateral costs,
3 less a reasonable allowance for use. Under this subdivision, a reasonable allowance
4 for use may not exceed the amount obtained by multiplying the full purchase price
5 of the motor vehicle by a fraction, the denominator of which is 100,000 or, for a
6 motorcycle, 20,000, or, for a motor home, 60,000, and the numerator of which is the
7 number of miles the motor vehicle was driven before the consumer first reported the
8 nonconformity to the motor vehicle dealer. The consumer has the option of selecting
9 a refund under this paragraph. If the consumer selects a refund, he or she shall
10 inform the manufacturer in the offer made pursuant to par. (c), and the manufacturer
11 shall provide a refund. ✓

12 **SECTION 7.** 218.0171 (2) (c) of the statutes is amended to read:

13 218.0171 (2) (c) To receive a comparable new motor vehicle or a refund due
14 under par. (b) 1. or 2., a consumer described under sub. (1) (b) 1., 2. or 3. shall offer
15 to the manufacturer of the motor vehicle having the nonconformity to transfer title
16 of that motor vehicle to that manufacturer. No later than 30 days after that offer, the
17 manufacturer shall provide the consumer with the comparable new motor vehicle or
18 refund, except that, if the motor vehicle is a commercial vehicle, the manufacturer
19 shall provide the owner, within 30 days after the offer, with a refund or with a
20 commitment in writing that the manufacturer will provide the owner with a
21 comparable new commercial vehicle within 120 days from the date of the written
22 commitment. The manufacturer shall exercise due diligence in providing a
23 comparable commercial vehicle. If the manufacturer opts to provide a comparable
24 vehicle but is unable to do so within 30 days, the manufacturer shall provide, at the
25 direction of the consumer, a vehicle for the temporary use by the consumer until the

✓
Commercial
Vehicle

new

^{new}
1 manufacturer provides the comparable vehicle. When the manufacturer provides
2 the ~~new~~ motor vehicle or refund, the consumer shall return the motor vehicle having
3 the nonconformity to the manufacturer and provide the manufacturer with the
4 certificate of title and all endorsements necessary to transfer title to the
5 manufacturer.

6 **SECTION 8.** 218.0171 (3) of the statutes is amended to read:

7 218.0171 (3) If there is available to the consumer an informal dispute
8 settlement procedure ~~which~~ that is certified under sub. (4), the consumer may not
9 bring an action under sub. (7) or make an offer specified in sub. (2) (c) or (cm) unless
10 he or she first resorts to completes that procedure ^{and provides written notice to the}
^{manufacturer that he or she}
^{rejects the decision rendered in}

11 **SECTION 9.** 218.0171 (7) of the statutes is amended to read: the procedure

12 218.0171 (7) In addition to pursuing any other remedy, a consumer may bring,
13 an action to recover for any damages caused by a violation of this section. The sub. ^{consumer}
^{has been}
^{awarded}
^{relief}
^{under}
14 (2) (b). If the ~~manufacturer has~~ an informal dispute settlement procedure that is
15 certified under sub. (4), the court shall award a consumer who prevails in an action
16 brought under this section the remedies of sub. (2) (b) 2. a. or b., together with costs,
17 disbursements, and reasonable attorney fees, and any equitable relief the court
18 determines appropriate. If the manufacturer does not have an informal dispute
19 settlement procedure that is certified under sub. (4), the court shall award a
20 consumer who prevails in such an action twice the amount of any pecuniary loss,
21 together with costs, disbursements and reasonable attorney fees, and any equitable
22 relief the court determines appropriate. If the vehicle is a commercial vehicle, the
23 portion of pecuniary loss subject to doubling is limited to the purchase price of the
24 vehicle's components installed or warranted by the manufacturer, less a reasonable
25 allowance for use. An action must be commenced within 18 months after first

or if the consumer is not
granted an award under the
certified procedure ^{NO}

two years

1 delivery of the motor vehicle except that the period is tolled by participation in an
2 informal dispute settlement procedure as specified in sub. (3).

3 **(END)**

**2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3152/P3ins
PJH:jld:rs

INSERT A:

✓

SECTION 1. 218.0171 (2) (b) 1. of the statutes is amended to read:

218.0171 (2) (b) 1. If after a reasonable attempt to repair or a final attempt to cure provided under par. (a) ✓ the nonconformity is not repaired, the manufacturer shall carry out the requirement under subd. 2. or 3., whichever is appropriate.

History: 1983 a. 48; 1985 a. 205 ss. 1m to 6, 8; 1987 a. 105, 169, 323, 403; 1989 a. 31; 1999 a. 31 s. 287; Stats. 1999 s. 218.0171; 2001 a. 45.

INSERT B:

✓

SECTION 2. 218.0171 (2) (b) 2. a. of the statutes is amended to read:

218.0171 (2) (b) 2. a. Accept return of the motor vehicle and replace the motor vehicle with a comparable new motor vehicle and refund any collateral costs. The consumer has the option of selecting a comparable new vehicle under this paragraph, ✓
except that in lieu of a comparable new vehicle, the manufacturer may elect to
provide a refund under ~~par. (b)~~ ^{this paragraph} upon waiver by the manufacturer of the allowance
for a use deduction provided under ~~par. (b)~~ ^{this paragraph} If the consumer selects a comparable new
vehicle, he or she shall inform the manufacturer in the offer made pursuant to par.
(c). ✓

(end ins B)

History: 1983 a. 48; 1985 a. 205 ss. 1m to 6, 8; 1987 a. 105, 169, 323, 403; 1989 a. 31; 1999 a. 31 s. 287; Stats. 1999 s. 218.0171; 2001 a. 45.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3152/P3

PJH/jld/pg

Stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

by end of day
2-13-04

Regen

1 AN ACT *to amend* 218.0171 (1) (f), 218.0171 (1) (h) 2., 218.0171 (2) (a), 218.0171
2 (2) (b) 1., 218.0171 (2) (b) 2. (intro.), 218.0171 (2) (b) 2. a., 218.0171 (2) (b) 2. b.,
3 218.0171 (2) (c), 218.0171 (3) and 218.0171 (7); and *to create* 218.0171 (1) (am)
4 of the statutes; **relating to:** repair, replacement, and refund under new motor
5 vehicle warranties.

Inset A
Inset B

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 **SECTION 1.** 218.0171 (1) (am) of the statutes is created to read:

7 218.0171 (1) (am) "Commercial vehicle" means a motor vehicle designed or
8 used to transport passengers or property for commercial purposes and having at
9 least one of the following characteristics:

10 1. The vehicle is a single vehicle with a gross vehicle weight rating, registered
11 weight, or actual gross weight of 16,001 or more pounds.

1 2. The vehicle is a combination vehicle with a gross combination weight rating,
2 registered weight, or actual gross weight of 16,001 or more pounds inclusive of a
3 towed unit with a gross weight weight rating, registered weight, or actual gross
4 weight of more than 10,000 pounds.

5 **SECTION 2.** 218.0171 (1) (f) [✓] of the statutes is amended to read:

6 218.0171 (1) (f) “Nonconformity” means a condition or defect which
7 substantially impairs the use, value or safety of a motor vehicle, and is covered by
8 an express warranty applicable to the motor vehicle or to a component of the motor
9 vehicle, ~~but~~. “Nonconformity” does not include a condition or defect which is the
10 result of abuse, neglect or unauthorized modification or alteration of the motor
11 vehicle by a consumer, or a condition or defect affecting those portions of a motor
12 home designed, used, or maintained primarily as living facilities. Living facilities
13 of a motor home include the flooring, appliances, plumbing system and fixtures, roof
14 air conditioner, television and entertainment systems, furnace, generator, electrical
15 systems other than automotive circuits, the side entrance door, exterior
16 compartments, and any windows other than the windshield and driver and front
17 passenger windows.

18 **SECTION 3.** 218.0171 (1) (h) 2. [✓] of the statutes is amended to read:

19 218.0171 (1) (h) 2. The motor vehicle is out of service and in the custody of the
20 manufacturer, an authorized dealer, or an appropriate authorized warranty repair
21 facility due to repair attempts for an aggregate of at least 30 days because of
22 warranty nonconformities. Time spent in the custody of the manufacturer,
23 authorized dealer, or authorized warranty repair facility during the final attempt to
24 cure provided under sub. (2) (a) may not be included in the 30-day time period under
25 this paragraph.

1 **SECTION 4.** 218.0171 (2) (a) of the statutes is amended to read:

2 218.0171 (2) (a) If a new motor vehicle does not conform to an applicable
3 express warranty and the consumer reports the nonconformity to the manufacturer,
4 the motor vehicle lessor ~~or~~, any of the manufacturer's authorized motor vehicle
5 dealers, or an appropriate authorized warranty repair facility and makes the motor
6 vehicle available for repair before the expiration of the warranty or one year after
7 first delivery of the motor vehicle to a consumer, whichever is sooner, the
8 nonconformity shall be repaired. In the case of a commercial vehicle or a motor home,
9 if the manufacturer, its agent, its authorized dealer, or an appropriate authorized
10 warranty repair facility is unable to repair or correct any nonconformity in a new
11 motor vehicle after a reasonable attempt to repair, the consumer shall notify the
12 manufacturer by certified mail, return receipt requested, at the address provided by
13 the manufacturer. The manufacturer shall, within 7 days after receipt of such
14 notification, notify the consumer of a reasonably accessible repair facility and, after
15 delivery of the vehicle to the designated repair facility by the consumer, the
16 manufacturer shall, within 14 days, conform the motor vehicle to the warranty. If
17 the manufacturer fails to notify the consumer of a reasonably accessible repair
18 facility or perform the repairs within the time periods prescribed in this subsection,
19 the requirement that the manufacturer of the commercial vehicle or motor home be
20 given a final attempt to cure the nonconformity does not apply.

21 **SECTION 5.** 218.0171 (2) (b) 1. [✓] of the statutes is amended to read:

22 218.0171 (2) (b) 1. If after a reasonable attempt to repair or a final attempt to
23 cure provided under par. (a) the nonconformity is not repaired, the manufacturer
24 shall carry out the requirement under subd. 2. or 3., whichever is appropriate.

25 **SECTION 6.** 218.0171 (2) (b) 2. [✓] (intro.) of the statutes is amended to read:

1 218.0171 (2) (b) 2. (intro.) ~~At the direction of a consumer described under sub.~~
2 ~~(1) (b) 1., 2. or 3.,~~ The manufacturer shall do one of the following:

3 **SECTION 7.** 218.0171 (2) (b) 2. a. of the statutes is amended to read:

4 218.0171 (2) (b) 2. a. Accept return of the motor vehicle and replace the motor
5 vehicle with a comparable new motor vehicle and refund any collateral costs. The
6 consumer has the option of selecting a comparable new vehicle under this paragraph,
7 except that, in lieu of a comparable new vehicle, the manufacturer may elect to
8 provide a refund under this paragraph upon waiver by the manufacturer of the
9 allowance for a use deduction provided under this paragraph. If the consumer selects
10 a comparable new vehicle, he or she shall inform the manufacturer in the offer made
11 pursuant to par. (c).

12 **SECTION 8.** 218.0171 (2) (b) 2. b. of the statutes is amended to read:

13 218.0171 (2) (b) 2. b. Accept return of the motor vehicle and refund to the
14 consumer and to any holder of a perfected security interest in the consumer's motor
15 vehicle, as their interest may appear, the full purchase price plus any sales tax,
16 finance charge, amount paid by the consumer at the point of sale and collateral costs,
17 less a reasonable allowance for use. Under this subdivision, a reasonable allowance
18 for use may not exceed the amount obtained by multiplying the full purchase price
19 of the motor vehicle by a fraction, the denominator of which is 100,000 or, for a
20 motorcycle, 20,000, or, for a motor home, 60,000, and the numerator of which is the
21 number of miles the motor vehicle was driven before the consumer first reported the
22 nonconformity to the motor vehicle dealer. The consumer has the option of selecting
23 a refund under this paragraph. If the consumer selects a refund, he or she shall
24 inform the manufacturer in the offer made pursuant to par. (c), and the manufacturer
25 shall provide a refund.

1 **SECTION 9.** 218.0171 (2) (c) of the statutes is amended to read:

2 218.0171 (2) (c) To receive a comparable new motor vehicle or a refund due
3 under par. (b) 1. or 2., a consumer described under sub. (1) (b) 1., 2. or 3. shall offer
4 to the manufacturer of the motor vehicle having the nonconformity to transfer title
5 of that motor vehicle to that manufacturer. No later than 30 days after that offer, the
6 manufacturer shall provide the consumer with the comparable new motor vehicle or
7 refund, except that, if the motor vehicle is a commercial vehicle, the manufacturer
8 shall provide the owner, within 30 days after the offer, with a refund or with a
9 commitment in writing that the manufacturer will provide the owner with a
10 comparable new commercial vehicle within 120 days from the date of the written
11 commitment. The commercial vehicle manufacturer shall exercise due diligence in
12 providing a comparable commercial vehicle. If the commercial vehicle manufacturer
13 opts to provide a comparable vehicle but is unable to do so within 30 days, the
14 manufacturer shall provide, at the direction of the consumer, a vehicle for the
15 temporary use by the consumer until the manufacturer provides the comparable new
16 vehicle. When the manufacturer provides the new motor vehicle or refund, the
17 consumer shall return the motor vehicle having the nonconformity to the
18 manufacturer and provide the manufacturer with the certificate of title and all
19 endorsements necessary to transfer title to the manufacturer.

20 **SECTION 10.** 218.0171 (3) of the statutes is amended to read:

21 218.0171 (3) If there is available to the consumer an informal dispute
22 settlement procedure ~~which~~ that is certified under sub. (4), the consumer may not
23 bring an action under sub. (7) or make an offer specified in sub. (2) (c) or (cm) unless
24 he or she first ~~resorts to~~ completes that procedure and provides written notice to the
25 manufacturer that he or she rejects the decision rendered in the procedure.

SECTION 11. 218.0171 (7) of the statutes is amended to read:

218.0171 (7) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this section. ~~The sub.~~ (2) (b). If the consumer has been awarded relief under an informal dispute settlement procedure that is certified under sub. (4), or if the consumer is not granted an award under the certified procedure, the court shall award a consumer who prevails in an action brought under this section the remedies of sub. (2) (b) 2. a. or b., together with costs, disbursements, and reasonable attorney fees, and any equitable relief the court determines appropriate. If the manufacturer does not have an informal dispute settlement procedure that is certified under sub. (4), the court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief the court determines appropriate. If the vehicle is a commercial vehicle, the portion of pecuniary loss subject to doubling is limited to the purchase price of the vehicle's components installed or warranted by the manufacturer, less a reasonable allowance for use. An action must be commenced within 2 years after first delivery of the motor vehicle except that the period is tolled by participation in an informal dispute settlement procedure as specified in sub. (3).

(END)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- 1 AN ACT ~~to create~~ 218.01 (3) (a) 35m. and 218.016 of the statutes; **relating to:**
2 repair, replacement and refund under warranties applicable to used motor
3 vehicles.

Analysis by the Legislative Reference Bureau

Currently the law governing repair, replacement and refund under a motor vehicle warranty, commonly called the "lemon law" provides remedies to a person who purchases or leases a new motor vehicle. Among other things, the lemon law requires a motor vehicle dealer to repair a nonconformity (a condition or defect that substantially impairs the use, value, or safety of the motor vehicle) that is covered by an express warranty applicable to a new motor vehicle sold or leased to a consumer, and that was not caused by the consumer's use or neglect. In general, if the nonconformity cannot be repaired and the consumer reports the nonconformity to the manufacturer, the motor vehicle lessor or any of the manufacturer's authorized motor vehicle dealers within one year after the first delivery of the motor vehicle to the consumer or before the expiration of the express warranty, then the consumer may require the manufacturer to do one of the following: 1) accept return of the motor vehicle and replace it with a comparable new motor vehicle and refund any collateral costs incurred by the consumer; or 2) accept return of the motor vehicle and refund the full purchase price of the motor vehicle plus any sales tax, finance charge, amount paid by the consumer at the point of sale, and collateral costs, less a reasonable amount for use.

This bill creates a warranty that a used motor vehicle sold by a motor vehicle dealer is mechanically operational and sound and will remain so for a specified

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Under this bill, a manufacturer may opt to refund the purchase price of a motor vehicle unless the consumer opts for a replacement vehicle when ^{the} consumer offers to transfer title to the manufacturer in order to receive a replacement or refund. The bill also provides that a vehicle must be out of service and in the custody of the manufacturer or its agent for 30 days before the customer becomes eligible for a replacement or refund.

The bill also excludes from the definition of a "nonconformity" those portions of a motor home that are used or designed primarily as living facilities. Finally, the bill changes the lemon law as it relates to commercial motor vehicles by granting a manufacturer a final attempt to cure within a certain time frame before a replacement or refund may be granted, and extends ~~the~~ ^{the} time for a replacement of the commercial motor vehicle if a final cure cannot be effected. However, if the manufacturer cannot replace a commercial motor vehicle within 30 days, the manufacturer must, upon request by the consumer, provide a vehicle for the consumer's temporary use until the manufacturer can provide the replacement commercial motor vehicle.

✓ For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

(end ins B)